IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

Bail Appl..No. 7298 of 2007()

CRIME NO. 734/07 OF MANNARKKAD POLICE STATION

PETITIONER/ACCUSED

RAMAKRISHNAN @ KUNHANI,
S/O UNNIKUTTAN, MANCHEERI HOUSE,
VIYYAKURSSI, MANNARKKAD.

BY ADV. SRI.RAJESH NAMBIAR

RESPONDENTS:

THE S.I. OF POLICE, MANNARKKAD POLICE
STATION, THROUGH THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7298 of 2007

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Dated this the 3rd day of December, 2007

O R D E R

Application for anticipatory bail. The petitioner is the sole accused in a crime registered initially under Section 324 I.P.C. In the course of the investigation, report has been filed to alter the section of offence from S. 324 to S. 308 I.P.C. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The crux of the allegations against the petitioner is that he, using a dangerous weapon, inflicted a serious injury on the victim, who had gone to his shop on the relevant date.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He is not the aggressor, but is only a victim of aggression. The allegations raised are frivolous. It is too much to assume that the incident could have happened in the artificial manner narrated by the informant and the victim. At any rate, inclusion of Section 308 I.P.C. is most unjustified. Such inclusion is with vexatious intent.

4. The learned Prosecutor opposes the application. He submits that the investigation into the crime reveals serious offences committed by the petitioner. The inadequacy of motive is no reason to invoke the discretion under Section 438 Cr.P.C. in favour of the petitioner. For no semblance of a valid reason, the petitioner had attacked the victim. In any view of the matter, there is absolutely no justification in the prayer for grant of anticipatory bail. The petitioner may be directed to surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal course. There are no circumstances justifying the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioner, submits the learned Prosecutor.

4. I find merit in the opposition by the learned Prosecutor. The learned Prosecutor has drawn my attention to the nature of injury suffered by the victim, the manner of attack, the weapon of attack and the part of the anatomy where the injury had been planted. I am unable to find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under section 438

Cr.P.C. in favour of the petitioner. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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